
In the Matter of:	:	
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RUMALDITA DOVALINA,	:	HUDBCA No. 95-A-152-D28
Docket No. 95-5062-DB (LDP)	:	
Respondent	:	
	:	

For the Respondent:

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DECISION ON RESPONDENT'S APPLICATION FOR ATTORNEY'S FEES
PURSUANT TO EOUAL ACCESS TO JUSTICE ACT

January 18, 1996

By letter dated April 27, 1995, the U.S. Department of Housing and Urban Development ("HUD") notified Respondent Rumaldita Dovalina ("Dovalina" or "Respondent") that a Limited Denial of Participation ("LDP") had been imposed on her by the San Antonio HUD Office. After an informal hearing on May 17, 1995, Dovalina's LDP was terminated. By Decision dated June 13, 1995, the LDP was terminated, but it was not voided from its inception. Dovalina requested a hearing de novo to determine whether the LDP was properly imposed on her, and whether it should have been terminated from its inception. By determination dated November 30, 1995, this Board held that Dovalina's LDP was not supported by the record or imposed in accordance with law, and was void ab initio.

Pursuant to the Equal Access to Justice Act ("EAJA" or "Act"), 5 U.S.C. § 504, Respondent filed an application to recover attorney's fees and costs as a prevailing party as defined in the

Act. The Government opposes the application on the grounds that the hearing on the LDP was held pursuant to regulation and not statute, and that therefore it is not an "adversary adjudication" which is covered by the Act.

DECISION

The EAJA states, in Section (a)(1), that an agency that conducts an "adversary adjudication" shall award, "to a prevailing party other than the United States, fees and other expenses incurred in connection with that proceeding, unless the adjudicative officer finds that the position of the agency was substantially justified or that special circumstances make an award unjust." 5 U.S.C. § 504. Because the EAJA is a waiver of the sovereign's traditional immunity from claims to recover attorney's fees, it must be construed narrowly. Spencer Kim and Kamex Construction Corp., HUDBCA No. 86-1634-D29 (Feb. 26, 1988).

An "adversary adjudication" is defined by EAJA as "an adjudication under section 554 of this title in which the position of the United States is represented by counsel or otherwise." 5 U.S.C. §504 (b)(1)(C)(i). An adjudication under Section 554 is "one required by statute to be determined on the record after an opportunity for an agency hearing," 5 U.S.C. §554 (a), unless the proceeding falls within one of six enumerated exceptions, which this proceeding does not. Unless an agency hearing is statutorily mandated, the Act does not provide for the award of attorneys fees to the prevailing party. The hearing in this case was provided for by regulation, not statute. These regulations make no provision for an award of attorney's fees. See 24 CFR, Part 24 § 24.713.

As this Board has previously held, we do not have jurisdiction to award attorney's fees pursuant to EAJA in cases involving an LDP because LDPs are not adversary adjudications as defined in the EAJA. Spencer Kim and Kamax Construction Corp., HUDBCA No. 86-1634-D9, supra. Therefore, Respondent's application for attorney's fees pursuant to the Act is DENIED.

Jean S. Cooper
Administrative Judge

January 18, 1996